
HOUSE BILL 3388

State of Washington

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By Representatives Ross, Hurst, O'Brien, Pearson, Newhouse, Ericksen, Warnick, Kirby, Haler, Hinkle, Roach, Priest, Kretz, Rodne, McCune, Walsh, Kristiansen, Orcutt, Schindler, Condotta, Goodman, Crouse, Chandler, Dunn, Bailey, Armstrong, Ahern, Herrera, Kelley, and Smith

Read first time 03/12/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to street gangs; adding a new section to chapter
2 43.20A RCW; adding a new chapter to Title 7 RCW; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the people of
6 Washington state face a crisis brought upon by increased gang crime and
7 violence, which is threatening public safety in communities across the
8 state. Those who live in communities where gang membership is on the
9 rise find themselves living with the daily threat of intimidation and
10 harassment. Ordinary citizens are increasingly vulnerable to gang-
11 related crimes such as drug dealing, damage to real property, and theft
12 of personal property and automobiles, or even assault, rape, and
13 murder. Law enforcement officers, prosecutors, and local communities
14 require assistance to combat this clear and present danger to the law-
15 abiding residents of Washington.

16 (2) The work group on gang-related crime, established under
17 Substitute Senate Bill No. 5987 in 2007, met regularly to study and
18 make recommendations on the problems of gang-related crime in
19 Washington. The legislature recognizes the efforts of the work group

1 in trying to prevent, intervene, and suppress gang-related violence in
2 the state. It is the consensus of the work group, and it is recognized
3 by the legislature, that the sum of ten million dollars, or as much
4 thereof as may be necessary, should be appropriated to the governor's
5 juvenile justice advisory committee to help provide local community
6 programs with the tools they need to reduce gang violence and protect
7 the citizens of Washington from being victimized by violent street
8 gangs.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.20A RCW
10 to read as follows:

11 (1) Subject to available funds, the governor's juvenile justice
12 advisory committee shall issue a request for proposal to implement five
13 pilot projects throughout the state to focus on combating criminal
14 street gangs and violence.

15 (a) The pilot projects shall be designed to have a three-pronged
16 approach to preventing, intervening, and suppressing gang-related
17 violence.

18 (b) The governor's juvenile justice advisory committee shall give
19 priority to grant applicants showing that gang violence is an
20 increasing problem in their respective communities and that addressing
21 the impact of street gangs is a high priority within their local
22 communities. Eligible applicants shall be nongovernmental sponsors,
23 either as the sole sponsor or as a cosponsor with a government agency.

24 (c) Grant applications shall include project processes and
25 protocols for defining objectives and measurable results.

26 (d) The costs of administration shall not exceed four percent of
27 appropriated funding.

28 (e) Grants awarded under this section shall be used to supplement,
29 not supplant, other moneys that are available for combating criminal
30 street gangs and violence.

31 (2) The governor's juvenile justice advisory committee shall
32 convene a statewide gang work group.

33 (a) The governor's juvenile justice advisory committee, in
34 collaboration with the work group, shall meet semiannually to determine
35 how grants are to be distributed and to provide oversight of the
36 selected pilot projects established in subsection (1) of this section.

1 (b) The department of social and health services shall provide
2 staff support and the use of its facilities, as may be required by the
3 committee and work group.

4 (c) The work group shall include a total of twenty members,
5 comprising:

6 (i) One member from each of the two largest caucuses of the senate,
7 appointed by the president of the senate;

8 (ii) One member from each of the two largest caucuses of the house
9 of representatives, appointed by the speaker of the house of
10 representatives;

11 (iii) The attorney general or the attorney general's designee;

12 (iv) A prosecutor appointed by the Washington association of
13 prosecuting attorneys;

14 (v) A defender appointed by the Washington defender association or
15 the Washington association of criminal defense lawyers;

16 (vi) The state superintendent of public instruction or the
17 superintendent's designee;

18 (vii) The secretary of the department of corrections or the
19 secretary's designee;

20 (viii) The secretary of the department of social and health
21 services or the secretary's designee;

22 (ix) The chief of the Washington state patrol or the chief's
23 designee;

24 (x) A city representative working through the association of
25 Washington cities, a nonprofit organization;

26 (xi) A representative of the Washington state association of
27 counties; and

28 (xii) Members, appointed by the governor, including representatives
29 of:

30 (A) City law enforcement;

31 (B) County law enforcement;

32 (C) Court administrators, including juvenile court administrators;

33 and

34 (D) Experts on gangs or delinquency prevention.

35 (3)(a) The department of social and health services shall be
36 responsible for any costs incurred due to the convening of the work
37 group and the oversight and administration of the grant program.

1 (b) Nonlegislative members shall be compensated in accordance with
2 RCW 43.03.250 and shall be reimbursed for travel expenses incurred in
3 carrying out the duties of the work group in accordance with RCW
4 43.03.050 and 43.03.060, within available resources.

5 (4) For purposes of this section, the terms "gang" and "pattern of
6 criminal activity" have the same definitions as in RCW 9.94A.030.

7 NEW SECTION. **Sec. 3.** The legislature recognizes that counsel is
8 not constitutionally required in civil actions (*In re Marriage of King*,
9 No. 79978-4 (Wash. Dec. 6, 2007)), but believes that counsel should be
10 required as a matter of public policy in actions brought against a
11 respondent criminal street gang member under section 4 of this act who
12 might risk the loss of procedural rights because such an action could
13 result in an injunction that may be enforced by a summary order holding
14 the respondent in contempt of court.

15 NEW SECTION. **Sec. 4.** (1) Equitable relief is authorized to
16 enjoin, abate, and prevent criminal street gang activity, whether it is
17 a private or public nuisance. Relief is authorized to enjoin criminal
18 street gang-related offenses defined in RCW 9.94A.030 and associated
19 noncriminal acts or acts which are known precursors to gang-related
20 criminal acts as specified in subsection (2) of this section, upon a
21 showing of the following elements by a preponderance of the evidence:

22 (a) A gang is named as a defendant and has at least five members,
23 at least two of whom possess active leadership roles at the time of
24 seeking relief, and that any person sought to be enjoined is an active
25 or current member of the gang;

26 (b) The gang is a cohesive organization with a historical
27 relationship to the described geographical area for the past five years
28 or more immediately prior to the filing, and with known leadership,
29 membership, and criminal practices;

30 (c) The defendants and other gang members have committed, during
31 the five years immediately prior to the filing of the petition, a
32 pattern of criminal street gang activity within the described
33 geographical area. It is necessary to demonstrate a nexus between
34 criminal gang activity and crime in the area;

35 (d) As a result of the criminal activity of the gang or members, a
36 significant number of nongang members residing within the described

1 geographical area are in reasonable fear of their physical security or
2 that of their family members, or of significant damage to their
3 property to such an extent that they are intimidated or terrorized, and
4 are effectively prevented from living normal lives; and

5 (e) The plaintiffs have engaged in prevention and intervention
6 planning to serve a reasonable number of the gang's total membership
7 with prevention and intervention services to divert them from gang
8 activity.

9 (2) The complaint for equitable relief shall contain a statement of
10 specific relief requested and activities sought to be enjoined, which
11 may include:

12 (a) Associating with other gang members;

13 (b) Confronting, intimidating, annoying, harassing, threatening,
14 challenging, provoking, or assaulting any person;

15 (c) Confronting, intimidating, annoying, harassing, threatening,
16 challenging, provoking, or assaulting any person known to be a victim
17 or witness to gang activity;

18 (d) Possessing or knowingly remaining in the presence of anyone who
19 is in possession of any firearm, ammunition, or deadly weapon in a
20 public place;

21 (e) Possessing or knowingly remaining in the presence of anyone who
22 is in possession of any controlled substance or drug paraphernalia;

23 (f) Consuming alcohol in public;

24 (g) Being present on any private property without the written
25 consent of the owner;

26 (h) Defacing any public or private property or possessing graffiti
27 or tagging tools; or

28 (i) Violating any court-defined curfew.

29 (3) The attorney general, the prosecuting attorney, city attorney,
30 or city prosecutor may maintain an action of an equitable nature in the
31 name of the state under this act. If a city applies for equitable
32 relief under this act, the city shall seek and obtain approval of the
33 prosecuting attorney of the county in which the city is located to
34 maintain the action.

35 (4) Service of the summons and complaint on the defendant gang may
36 be made by representative service of at least five active and current
37 members of the gang, at least two of whom possess active leadership
38 roles at the time of application. A person served in a representative

1 capacity and who appears may request, if indigent, that an attorney be
2 appointed to represent him or her at public expense. If the court
3 appoints counsel, the plaintiff shall pay the cost of representation.
4 Notice of this shall be provided in the summons. A person served in a
5 representative capacity of the gang need not testify, but may testify
6 and cross-examine witnesses and present testimony and other evidence on
7 his or her own behalf.

8 (5) A court of competent jurisdiction shall conduct an evidentiary
9 hearing on the complaint for equitable relief filed under this act
10 whether or not any person served in a representative capacity of the
11 gang appears to contest the issuance of the injunction. The plaintiff
12 must prove by a preponderance of the evidence all of the elements set
13 forth in subsection (1) of this section that the persons served in a
14 representative capacity are current and active members of the gang, and
15 that the specific remedies requested are reasonable and necessary.

16 (6) If after trial the court grants the request for relief, it
17 shall issue an appropriate order of injunction against the gang and any
18 members of the gang within the delineated geographical area as
19 authorized by this section.

20 (7) An injunction issued under this section is not effective as to
21 any person unless the plaintiff makes a showing to the court, which may
22 be made ex parte, that the person is an active or current member or
23 associate of the gang, as defined in RCW 9.94A.030, and, after
24 authorization by the court, the person is served with personal notice
25 of the injunction. The notice must state that the person may request
26 an evidentiary hearing at which the plaintiffs must present evidence
27 and show by preponderance of evidence that the defendant is a member of
28 the gang. The individual need not testify, but may testify and may
29 cross-examine witnesses for the plaintiffs and may present testimony
30 and other evidence on his or her own behalf. The plaintiff may seek to
31 add any person to an existing gang injunction at any time using the
32 procedures in this subsection, regardless of whether the person was a
33 gang member or associate at the time that the request for relief was
34 requested or granted.

35 (8) The final order of injunction shall contain an opt-out
36 provision, by which an alleged gang member previously included in the
37 order may petition at any time for removal from the injunction (a)
38 after a period of three years in which no act by the alleged gang

1 member has resulted in either a contempt finding or a conviction of
2 crime and (b) there is no criminal charge pending at the time of the
3 petition or a hearing on the petition. In the petition, the alleged
4 gang member may request a court hearing on the matter.

5 (9) All actions to punish any violation of the injunction shall be
6 by prosecution of the crime of contempt of court. It is an affirmative
7 defense that the person charged was a gang member but that he or she
8 was no longer an active or current member of the gang at the time of
9 the alleged violation.

10 (10) No nonprofit or charitable organization that is conducting its
11 affairs with ordinary care and skill, no labor organization, and no
12 governmental entity, shall be enjoined or abated under this chapter.

13 (11) For purposes of this section, the following definitions apply
14 unless the context clearly requires otherwise:

15 (a) "Gang" means "criminal street gang" as defined in RCW
16 9.94A.030; and

17 (b) "Pattern of criminal street gang activity" has the same meaning
18 as that term is defined in RCW 9.94A.030.

19 NEW SECTION. **Sec. 5.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 6.** Sections 3 and 4 of this act constitute a
24 new chapter in Title 7 RCW.

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